IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.MC.No. 1557 of 2006()

AGAINST THE ORDER DATED 29/05/2006 IN & CMP 3562/2005 IN CMP.3560/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER:

M/S.ICICI BANK LTD.,
M.G.ROAD, PADMA JUNCTION,
ERNAKULAM, KOCHI-682 035,
REP. BY ITS COLLECTION MANAGER RINGU VIJAYAN.

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS: PETITIONER

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1. STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE,
KALAMASSERY.

2. K.GOPAKUMAR,
GOKULAM, ELAMAKKARA ROAD,
EDAPPALLY, COCHIN-23.

3. SEBASTIAN, S/O.THOMAS,
VATTAVILAYIL HOUSE, KARIMUTTYKARA,
MARAYOOR VILLAGE, DEVIKULAM TALUK,
NOW RESIDING AT KALLAPARA BHAGAM, KALLPARA VILLAGE
UDUMELPET TALUK, COIMBATORE DISTRICT.

4. R.K.PILLAI,
18 KAMARAJ SALAI, PONDICHERRY.

5. DR.K.A.ARAVIND,
SHIBU NIVAS, V.C
CROSS CUT ROAD, VYTTILA, COCHIN-682 019.

6. ANTONY JACOB, 1/1860,
W.P.MANUAL ROAD,
KOCHI-682001.

7. SUNILKUMAR, S/O.SACHIDANANTHA MENON,
LALITHAM HOUSE, UDEPEMPEROOR KARA,
MANAKKUNNAM VILLAGE, KANAYANNUR TALUK.

8. SUNIL, S/O.KUTTAPPAN,
OZHUKAYIL HOUSE, PAZHAYARIKANDAM KARA,
KANJIKKUZHI VILLAGE, THODUPUZHA TALUK.

BY PUBLIC PROSECUTOR SMT. LATHA.
SRI.JOY C. PAUL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1557 OF 2006

Dated this the 31st day of January, 2007

ORDER

The petitioner claims to be aggrieved by the impugned order under which a vehicle – Hyundai Accent GLS bearing registration No. PY 01 N 9073 was directed to be released to the 3rd respondent. The petitioner is a Bank and is the financier in respect of the vehicle. The petitioner had entered into an agreement of hypothecation with the 2nd respondent. The 2nd respondent was thus in possession of the vehicle. The vehicle changed hands from the 2nd respondent and through the 5th, 6th, 7th and 8th respondents, the 3rd respondent allegedly came into possession of the vehicle. There is no dispute that on the relevant date the 3rd respondent was in possession of the vehicle.

2. The 2nd respondent appears to have initiated criminal proceedings against the 5th respondent alleging commission of the offence punishable under Sec.420 of the IPC by the 5th respondent against the 2nd respondent herein. In that criminal proceedings initiated, the vehicle concerned was

seized by the police and was produced before the learned Magistrate. The petitioner, who has rights under the hypothecation agreement and whose name is noted in the Registration Certificate, claimed possession of the vehicle on the strength of the Registration Certificate as also on the strength of the terms in the agreement between the petitioner and the 2nd respondent. The 3rd respondent also claimed release of the vehicle in his favour. He relied on the agreement between him and the 8th respondent as also the agreement between the 8th respondent and the 7th respondent.

3. The learned Magistrate, on an anxious consideration of all the relevant inputs, came to the conclusion that the 3rd respondent from whose possession the vehicle was seized is certainly the person who has a better claim to keep the vehicle in his possession as an interim arrangement till the final disposal of the criminal prosecution is made. Accordingly, the learned Magistrate directed that the vehicle be released to the 3rd respondent.

4. The learned counsel for the petitioner assails the direction to release the vehicle to the 3rd respondent. He contends that the petitioner under the agreement of

hypothecation has the right to repossess the vehicle. He further contends that the 2nd respondent under the agreement has no right to transfer the vehicle to the 5th respondent. Those claiming under the 2nd and 5th respondents cannot, at any rate, claim any better right than what the 2nd and 5th respondents themselves had. In these circumstances, the learned counsel contends that the court must have preferred the petitioner as the person entitled to keep the vehicle in his possession. He must have been permitted to dispose of the vehicle and enforce his claim for money outstanding under the agreement between him and the 2nd respondent. This, in short, is the contention.

5. The 3rd respondent's admitted actual possession on the date of the seizure can by no stretch of imagination be held to be illegal, even assuming that there is infraction of the provisions relating to recording of the transfer in the Registration Certificate. There cannot also be a dispute possibly that such entry about transfer of ownership can be effected in the wake of the agreement between the petitioner and the 2nd respondent only with no objection certificate of the petitioner under Sec.51 of the M.V. Act. There is no quarrel on these propositions at all. But the crucial question is - between the petitioner and the 3rd

respondent who has better claim to keep the vehicle in his possession pending disposal of the criminal proceedings? Though the 3rd respondent has not produced all documents to show that he has a claim through the 5th respondent or the 6th respondent, the conclusion appears to be inescapable at the moment and with the available inputs that he is at the end of the chain claiming valid legal actual possession through the 8th, 7th, 6th, 5th and 2nd respondents. That he was in actual possession of the vehicle through these respondents on the date of seizure is thus convincingly established.

6. The petitioner's right undoubtedly is to enforce his claim for the amount outstanding only. It is not made clear to me as to what is the dispute between the 2nd and the 5th respondents to attract the criminal prosecution for the offence punishable under Sec.420 of the IPC. The contention that all transfers effected by the 2nd respondent and those claiming under him are hit by Sec.23 of the Contract Act and consequently void and that the court should not recognize the possession of any one other than the 2nd respondent cannot certainly be accepted. The mere fact that the provisions of Secs.50 and 51 of the M.V. Act regarding endorsement of the

transfer in the Registration Certificate Book has not been carried out is no reason to conclude that the possession of the 3rd respondent is illegal and must be ignored by the court.

7. I am not called upon in this proceedings to decide the title of the claimants. The actual possession on the date of the seizure was undoubtedly that of the 3rd respondent. Such possession cannot be held to be illegal or opposed to any mandatory provisions of law. The mere inadequacy in the name of the 3rd respondent or those who claim under him not being entered into in the Registration Certificate Book is not, according to me, sufficient to render the claim of the 3rd respondent unsustainable.

8. The court below, according to me, appears to have passed an order which is eminently just and reasonable. It has been made clear by the court below that the petitioner's right to stake a claim against the 2nd respondent and to proceed against the vehicle which is offered as security through court shall remain. To me, it appears to be an eminently fair, reasonable and just arrangement and I am not, at any rate, persuaded to agree that the powers under Sec.482 of the Cr.P.C. ought to be invoked to interfere with such a direction issued. However, I

note that the learned Magistrate had not taken sufficient safeguards before directing release of the vehicle to the 3rd respondent. I am satisfied that the interests of justice will be served eminently by directing that the learned Magistrate must ensure that the 3rd respondent is obliged to execute a bond with two solvent sureties equal to the value of the vehicle. Such a direction shall serve the ends of justice, I am satisfied.

9. In the result:

(a) This Crl.M.C. is allowed in part.

(b) The impugned order is upheld in all other respects.

(c) But it is directed that the release of the vehicle in favour of the 3rd respondent shall be made only after the 3rd respondent executes a bond for the value of the vehicle to be fixed by the learned Magistrate with two solvent sureties each for the like sum.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge